DRAFTER'S NOTE LRB–0311/1dn
FROM THE JTK/RJM/MES/JK:kg:km
LEGISLATIVE REFERENCE BUREAU

September 25, 2000

1. This bill accomplishes your intended treatment of conduits in a more straight–forward manner than the treatment in 1997 LRB–4577/2. Rather than leaving conduit provisions in the law while eliminating the purpose for forming a conduit, this draft simply repeals the conduit provisions altogether. Please let us know if you have any questions regarding this treatment.

2. For this draft, we have included an appropriation but have specified "$–0–" for expenditure in fiscal years 2001–02 and 2002–03. When you know the dollar amounts that you need to include in the proposal, contact us and we will either redraft the proposal or draft an amendment, whichever is appropriate. Please also be aware that since the biennial budget act repeals and recreates the appropriation schedule under s. 20.005 (3), stats., if this draft is introduced and becomes law before the biennial budget act, that act will eliminate any appropriation increase provided in this draft. Therefore, you may wish to seek incorporation of any desired appropriation increase into the biennial budget bill.

3. Concerning proposed s. 11.19 (6), you may wish to exempt candidates for partisan office at a special election that is called concurrently with the spring election from the prohibition on retention of certain campaign moneys after December 31 of even–numbered years.

4. Upon reviewing the political party funding mechanism, we noted that 1999 LRB–1184/P1 did not contain any provision for disposal of moneys allocated from the checkoff on behalf of the candidates of a political party after that party ceases to be eligible for or withdraws from participation. This draft, therefore, provides for those moneys to be transferred to the general account of the Wisconsin election campaign fund.

5. Currently, ch. 11., stats., generally requires disclosure of financial activity by individuals and committees seeking to influence the election or defeat of candidates for state or local office [see ss. 11.01 (6), (7), (11), and (16), 11.05, and 11.06, stats.], unless a disbursement is made or obligation incurred by an individual other than a candidate or by a committee which is not organized primarily for political purposes, the disbursement is not a contribution as defined in the law and the disbursement is not made to expressly advocate the election or defeat of a clearly identified candidate [see s. 11.06 (2), stats.]. This language pretty closely tracks the holding of the U.S. Supreme Court in *Buckley v. Valeo, et al.*, 96 S. Ct. 612, 656–664 (1976), which prescribes the

boundaries of disclosure that may be constitutionally enforced (except as those requirements affect certain minor parties and independent candidates). Proposed s. 11.01 (16) (a) 3., which requires registration and reporting by individuals who or committees that make certain mass communications within 60 days of an election containing a name or likeness of a candidate at that election, an office to be filled at that election or a political party, appears to extend beyond the boundaries which the court permitted in 1976. As a result, its enforceability at the current time appears to rest upon a shift by the court in its stance on this issue.

I want to note briefly that a few of the provisions of this draft are innovative, and we do not yet have, to my knowledge, specific guidance from the U.S. Supreme Court concerning the enforceability of provisions of these types. It is well possible that a court may find a rational basis for these provisions that would permit them to be upheld. However, because of the concerns expressed by the U.S. Supreme Court in *Buckley v. Valeo, et al.*, 96 S. Ct. 612 (1976), and certain other cases, that attempts to regulate campaign financing activities may, in some instances, impermissibly intrude upon freedom of speech or association or upon equal protection guarantees, it is possible that enforceability problems with these provisions may occur. In particular, those provisions concerning which we do not have specific guidance at this time are:

(a) Proposed s. 11.12 (8), which requires candidates who do not accept public grants to file special reports that are not required of candidates who accept public grants.

(b) Proposed s. 11.24 (1v), which restricts the acceptance of contributions made by nonresident contributors.

(c) Proposed s. 11.50 (9) (b) and (ba), which provides public grants to qualifying candidates to match certain independent disbursements and disbursements exceeding the disbursement limitations by candidates who do not accept public grants. Although relevant case law has developed regarding this issue in the federal courts of appeal, there is no consensus among these courts on this issue. Due to the unsettled nature of the law in this area, it is not possible to predict how a court would rule if proposed s. 11.50 (9) (b) or (ba) were challenged.

(d) Proposed s. 11.19 (1m) and (6), which mandates disposal of certain campaign funds in a specified manner.

(e) Proposed s. 11.26 (8m), which prohibits committees from making contributions to certain other committees. Although the U.S. Supreme Court has not ruled on the enforceability of a provision of this type, the court has indicated some willingness to permit limits on contributions beyond those specifically approved in *Buckley v. Valeo*, 424 U.S. 1. See *California Med. Assn. v. FEC*, 453 U.S. 182, 193–99 (1981) ($5,000 limitation on individual–to–PAC contributions is a reasonable method of preventing individuals from evading limits on direct campaign contributions).

If you need further information or would like to make any changes based on the above information, please let us know.

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